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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

(HON. JANIS L. SAMMARTINO)

UNITED STATES OF AMERICA, Plaintiff, v. FRANCISCO DE LA CONCHA, Defendant.	Criminal No. 08CR0711-JLS DATE: April 18, 2008 TIME: 9:00 A.M. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTIONS

I.

STATEMENT OF FACTS[1]

On February 13, 2008, Border Patrol Agent Spear was patrolling the Imperial Beach area, approximately one mile north of the international border. At approximately 6:30 in the morning, Agent Spear notices some individuals. He then stormed those individuals, pronouncing his status as a Border Patrol agent. Agent Spear then arrested Mr. De la Concha and interrogated him.

Agents took Mr. De la Concha to the Imperial Beach Border Patrol station, and attempted to re-interrogate him. Before advising Mr. De la Concha of Miranda , the agents asked him questions that they deemed to be biographical in nature. Amongst other things, Mr. De la Concha informs the agents that he is suffering from pain from a lower hernia.

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[1] These "facts" are based on discovery provided by the government. Mr. De la Concha does not concede the veracity of any of these allegations.

The agents then informed Mr. Dr. la Concha of his Fifth Amendment right to remain silent, which he exercised.

Mr. De la Concha was ultimately housed in the Metropolitan Correctional Center ("MCC"). Upon arriving, he continued to complain of sever pain caused from a hernia, and has requested appropriate medical attention.

II.

COMPEL ALL DISCOVERABLE MATERIAL

Mr. De la Concha requests all discoverable material pursuant to Federal Rule of Criminal Procedure 16, Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S. 150 (1972). This includes material that may support any defense pre-trial motions. See United States v. Cedano-Arellano, 332 F.3d 568 (9th Cir. 2003) (Rule 16 applies to discovery material to defense pre-trial motions); United States v. Gamez-Orduno, 235 F.3d 453, 462 (9th Cir. 2000) (Brady applies to material supporting defense pre-trial motions). Mr. De la Concha also requests any evidence that the government may potentially attempt to enter vis-a-vis rule Federal Rule of Evidence 404(b).

Mr. De la Concha also requests the court to order access to his "A-File" pursuant to Rule 16(a)(1)(B) of the Federal Rule of Criminal Procedure, which provides that "upon request of the defendant, the government shall furnish to the defendant such copy of his prior criminal record, if any, as is within the possession, custody, or control of the government . . . ."

Mr. De la Concha requests all arrest reports, investigator's notes, memos from arresting officers, dispatch tapes, sworn statements, and prosecution reports pertaining to Mr. De la Concha and available under Fed. R. Crim. P. 16(a)(1)(B) and (C), Fed. R. Crim. P. 26.2 and 12(I). Mr. De la Concha specifically requests that all dispatch tapes or any other audio or visual tape recordings which exist and which relate in any way to his case and or his arrest be preserved and provided in their entirety.

Specifically, Mr. De la Concha requests a copy of the audiotape of ***any*** deportation hearing, as well as a transcript of any such proceeding.

III.

LEAVE TO FILE FURTHER MOTIONS

Mr. De la Concha has not yet received all requested discovery nor viewed his "A-File." After doing so, it is likely that Mr. De la Concha will need to file additional motions. Mr. De la Concha respectfully requests the court leave to file further motions if necessary.

IV.

CONCLUSION

Mr. De la Concha requests that the Court to grant the above motions.

Respectfully submitted,

Dated: April 4, 2008

/s/ ERICK L. GUZMAN

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